

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10121 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

CHIMANBHAI DAHYABHAI

THOROUGH P.O.A. HOLDER

Versus

COMPETENT AUTHORITY AND

ADDITIONAL COLLECTOR ULC

Appearance:

MR MTM HAKIM for Petitioner

MR PG DESAI, GOVERNMENT PLEADER for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/02/99

ORAL JUDGEMENT

Rule. Mr PG Desai, learned Government Pleader waives service of Rule for the respondent.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the inaction on the part of the respondent-Competent Authority & Additional Collector, ULC, Baroda in not deciding the petitioner's application under Section 21 of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the Act").

3. The petitioner has a parcel of land admeasuring 2428 sq.mtrs. of land in survey No. 653/1 of village Gotri in Baroda Urban Agglomeration. The petitioner had earlier applied for agricultural exemption under Section 20(1) of the Act in respect of the above land. The exemption was granted by Government Order dated 31.5.1979 and the petitioner thereafter requested for revoking the exemption and by order dated 1.7.1987 the State Government revoked the exemption. The petitioner thereafter filed the declaration under Section 21 of the Act on 22.6.1989. Initially on 4.11.1989 the Competent Authority had rejected the application on the ground that the petitioner had not produced the orders granting agricultural exemption and revoking agricultural exemption. Thereafter the petitioner had pointed out the circumstances under which the orders could not be produced as the petitioner's learned advocate had fallen sick and ultimately expired. The required documents were produced by the petitioner alongwith his letter dated 30.11.1989. In response to the same, the Competent Authority sent communication dated 16.12.1991 calling upon the petitioner to remain present for hearing on 2.1.1992. In the said communication the Competent Authority had also expressed his prima facie opinion that the application was prima facie time barred because the petitioner had not submitted his application for exemption under Section 20 (1) of the Act prior to 31.3.1979 nor was the petitioner granted agricultural exemption prior to 31.3.1979.

4. The petitioner's grievance in the present petition is that after the aforesaid hearing on 2.1.1992 when the petitioner had submitted his reply, the petitioner has not received any decision from the Competent Authority. Despite service of notice, no affidavit in reply is filed.

5. At the hearing of this petition, the learned counsel for the petitioner has submitted that apart from the fact that the Competent Authority did not render any decision pursuant to the hearing held on 2.1.1992, even on merits, the prima facie opinion expressed by the Competent Authority in his communication dated 16.12.1991 (Annexure "D") is not only inconsistent with the statutory provisions but is also contrary to the decisions of this Court.

6. The learned Government Pleader submitted that since the decision is not taken, at the highest the Competent Authority may be directed to decide the matter

in accordance with law.

7. Having heard the learned counsel for the parties, interests of justice require that while directing the Competent Authority to decide the petitioner's application under Section 21 of the Act in accordance with law, it will have to be further directed that the Competent Authority shall take into consideration the decision dated 10.2.1999 of this Court in Special Civil Application No. 6826 of 1998 wherein it is clearly laid down that irrespective of the fact whether the application under Section 20(1) of the Act was made or granted within 1139 days from the date of commencement of the Act (i.e. before 1.4.1979) or thereafter, once the application under Section 21 of the Act is found to have been made within 1139 days of cessation of the exemption earlier granted under Section 20(1) of the Act, the application has to be held as having been filed within the prescribed time limit. Since the application is pending since 1989, it would also be just and proper to direct the respondent to decide the application of the petitioner under Section 21 of the Act as expeditiously as possible and in any case within three months from the date of receipt of a certified copy of this order. It is directed accordingly.

7. Rule is made absolute in terms of the aforesaid directions with no order as to costs.

Direct Service of this order is permitted.

Sd/-

February 17, 1999 (M.S. Shah, J.)

sundar/-